



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC 21 2017

VIA ELECTRONIC MAIL

Mr. John Visceglia
429 Delancy Associates, LLC
c/o Summit Associates Inc.
Raritan Plaza I, Raritan Center
110 Fieldcrest Ave.
Edison, New Jersey 08818

Re: 429 Delancy Associates Property, Block 5042, Lot 15.02
Delancy Street, Newark, Essex County, New Jersey

Dear Mr. Visceglia:

The U.S. Environmental Protection Agency (EPA) is issuing this comfort letter to 429 Delancy Associates, LLC, ("Owner") regarding the property referenced above ("Property"). The Property is approximately 9.55 acres located on either side of Pierson's Creek in the vicinity of Delancy Street in Newark, New Jersey. The Property, which the Owner is proposing to redevelop, is located within the Pierson's Creek Superfund Site ("Site").

The purpose of this letter is to provide the Owner with information EPA has about the Property and potentially applicable federal statutory and regulatory provisions and policies under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et. seq.*, as of the date of this letter. It is also to describe the activities required to perform an investigation at the Property, which would render care or assistance under CERCLA Section 107(d)(1) in accordance with the National Contingency Plan (NCP), 40 C.F.R. Part 300, as well as outline some reasonable steps EPA would anticipate that the Owner would take as required by Section 101(40)(D) of CERCLA. The information provided in this letter should enable the Owner to make informed decisions as it prepares to redevelop the Property.

Under CERCLA, EPA's mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated land. In doing so, it is EPA's desire to return contaminated lands to productive reuse. As a step towards returning the Property to productive reuse, EPA is issuing this letter consistent with its current guidance.

History and Status of the Site and Property

The Site was placed on the National Priorities List on September 22, 2014. The Creek originates north of the Property and enters the Property after having flowed through a series of open

channels and closed culverts in a general south-southwesterly direction before discharging into the Port Newark Channel of Newark Bay. The Creek enters the Property from the north and bisects the Property into a 1.55-acre western parcel and an 8-acre eastern parcel. The Creek flows through the Property as an open channel.

Based upon information provided by the Owner, prior to acquiring the Property in 2007, the Owner states that it made all appropriate inquiries into the previous ownership and uses of the Property in accordance with generally accepted good commercial and customary standards and practices. The Property was acquired after conducting a Phase I Environmental Site Assessment in accordance with the American Society for Testing and Materials Designation E1527-05, as well as a Preliminary Assessment performed in accordance with New Jersey Code 7:26E-3.1 and 3.2. The Owner also states that it inquired into previous ownership through a Chain of Title Records search and evaluation of previous ownership through historical environmental data base research, historic insurance maps, aerial photographs, topographic maps, city directories, historical industrial directories, federal state, county and local government records and the New Jersey Department of Environmental Protection (NJDEP) Geographic Information System.

As a result of its all appropriate inquiries, the Owner became aware that the Property contained various pollutants, contaminants and hazardous substances, including mercury. In October 2012, EPA conducted an investigation of Pierson's Creek which confirmed the presence of mercury in the Creek sediments throughout the accessible portions of the Creek including the channel of the Creek that flows through the Property.

The Owner has conducted subsequent investigations at the Property to fulfill the NJDEP Site Remediation Reform Act requirements. In January 2014, sampling was conducted to delineate more fully the extent of metals contamination in stream sediments that may have come from an upstream source and to determine whether or not those sediments, if dredged, would be considered hazardous waste. A November 2014 investigation determined that the Creek was previously dredged and the dredged material was placed on the banks of the Creek.

CERCLA Liability Protections

CERCLA was amended in 2002 to allow certain parties who purchase contaminated or potentially contaminated properties to buy such properties and to avoid potential CERCLA liability if they qualify as a "bona fide prospective purchaser" (BFPP). The BFPP provision provides that a person meeting the criteria of CERCLA Sections 101(40) and 107(r)(1) and who purchases after January 11, 2002, will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the purchaser is responsible for establishing and maintaining, including demonstrating, BFPP status.

To assist the Owner and their legal counsel, the EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. See *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (Common Elements)* (Mar. 6, 2003) ("Common Elements Guidance") <http://www.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria->

qualify-bfpp-cpo-or-ilo-superfund. In addition to requiring "all appropriate inquiries" prior to acquiring real property, CERCLA also requires a BFPP to take "reasonable steps" with respect to releases at the property, provide cooperation, assistance, and access, and comply with institutional controls. Please note that there are additional criteria addressed in CERCLA Sections 101(40) and 107(r)(1) that a landowner must meet in order to continue to qualify as a BFPP under CERCLA.

In addition, CERCLA Section 107(d)(1), provides that no person shall be liable under CERCLA as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the NCP or at the direction of an on-scene coordinator with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases or threat of release of a hazardous substance.

Proposed Work at the Property

EPA understands the Property is currently vacant and preliminary investigations, conducted by the Owner and EPA, have identified soils with concentrations of mercury at elevated levels. The Owner has proposed to conduct an additional investigation of its Property to determine the nature and extent of the mercury contamination on the Property. This investigation, if conducted as approved, will also assist EPA in choosing the appropriate CERCLA remedy for the Property. The Owner will be responsible for ensuring that the investigation is performed in accordance with applicable local, state, and federal law.

To assist the Owner in performing the investigation consistent with the NCP for purposes of section 107(d)(1), as well as continuing to take reasonable steps for purposes of section 101(40)(D) and 107(r), based upon the information EPA has evaluated to date, EPA believes that the following would be appropriate activities by the Owner related to the mercury contamination found at the Property:

- Maintain site controls (e.g. fencing) to limit access to the Property.
- Conduct an investigation pursuant to an EPA-approved Work Plan, Quality Assurance Project Plan and Health and Safety Plan.
- Execute the access agreement attached to this letter. The agreement will authorize access to the Property by EPA and its authorized representatives.
- Complete work in compliance with the approved Plans and in accordance with all applicable local, state and federal laws and regulations.
- Coordinate with EPA personnel so that all samples obtained during the investigation are provided to EPA for analysis.

The activities suggested above by EPA are based on the nature and extent of contamination known to EPA at this time. With respect to taking reasonable steps at the Property, there could be other activities necessary to meet this criterion. If additional information regarding the nature and extent of hazardous substance contamination at the Property becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. You should ensure that you

are aware of the condition of the Property so that you and/or prospective owners are able to take reasonable steps with respect to any hazardous substance contamination at or on the Property. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

As you proceed with the approved work, you should inform EPA, as appropriate, of issues that arise and your progress, as well as when the work has been completed.

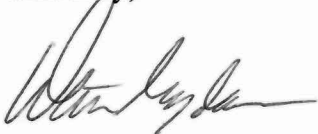
Conclusion

EPA generally issues comfort letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort letter is intended to help you make informed decisions by providing you with information that EPA has about the Property and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Property.

EPA is providing this information based on your representation that you qualify as a BFPP and will conduct the investigation as approved by EPA. This letter is not intended to limit or affect EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability. EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, or local environmental protection agency before taking any action to acquire, sell, lease, clean up, or reuse potentially contaminated property. It is your responsibility to ensure that the proposed use of the Property complies with any local, state, and federal laws or requirements that may apply.

EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. If you have any questions or wish to discuss activities described in this letter, please feel free to contact Pam Tames, P.E., at (212) 637-4255. Legal questions should be directed to Amelia Wagner of our Office of Regional Counsel at (212) 637-3141.

Sincerely,



Walter Mugdan, Director
Emergency and Remedial Response Division

Enclosure – Access Agreement

cc: Pam Tames, P.E., USEPA
Amelia Wagner, USEPA
Hollis Luzecky, USEPA

CONSENT FOR ACCESS TO PROPERTY

Name: **429 Delancy Associates, LLC**
Property: **Property designated as Block No. 5042, Lot No. 15.02.**
Address: **429 Delancy Street, Newark, Essex County, New Jersey**

I, the undersigned, represent that I am an officer of 429 Delancy Associates, LLC, and have the authority to consent to officers, employees and authorized representatives of the United States Environmental Protection Agency ("EPA") entering and having access to the Property listed above for the following purposes:

1. Oversight of investigation work being conducted on the Property;
2. Coordinate with EPA personnel so that all samples obtained during the investigation are provided to EPA for analysis.

I realize that these actions by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9601 *et. seq.*

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

Date

Signature

Printed Name

Title